BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

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| ALBERT CRANSON JR.,<br><br>Appellant,<br><br>v.<br><br>DEPARTMENT OF TRANSPORTATION,<br><br>Respondent. | Case No. DISM-02-0003<br><br>FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE BOARD |

## I. INTRODUCTION

1.1 **Hearing**. This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and GERALD L. MORGEN, Vice Chair. The hearing was held at the Holiday Inn Express, Chelan Room, Wenatchee, Washington, on December 5, 2002. RENÉ EWING, Member, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances**. Appellant Albert Cranson Jr. was present and was represented by Christopher Coker, Attorney at Law, of Parr & Younglove, P.L.L.C. Patricia Thompson, Assistant Attorney General, represented Respondent Department of Transportation.

1.3 **Nature of Appeal**. This is an appeal from a disciplinary sanction of dismissal for neglect of duty, gross misconduct and willful violation of agency policy. Respondent alleges that Appellant made threats about bringing a gun to work and killing two of his coworkers.



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1.4 **Citations Discussed**. WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Rainwater v. School for the Deaf, PAB No. D89-004 (1989); Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

## II. FINDINGS OF FACT

2.1 Appellant Albert Cranson Jr. was a Maintenance Technician 2 and permanent employee for Respondent Department of Transportation. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on January 11, 2002.

2.2 By letter dated January 3, 2002, Donald S. Senn, Regional Administrator, informed Appellant of his suspension effective January 3, 2002, followed by his dismissal effective January 18, 2002. Mr. Senn charged Appellant with neglect of duty, gross misconduct and willful violation of agency policy. Mr. Senn specifically alleged that Appellant threatened to shoot two coworkers.

2.3 Appellant began his employment with the Department of Transportation in September 1990. Appellant's performance evaluations generally indicate that Appellant was a good employee, however, several of the evaluations make reference to Appellant's displays of anger in the workplace. On numerous occasions, Appellant was directed by his supervisors to control his anger and temper.



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2.4 Lionel Heinold, Maintenance Operations Superintendent, met with Appellant to discuss Appellant's angry and confrontational manner in the workplace. In a letter dated January 16, 1997, to Appellant, Mr. Heinold wrote:

> Your behavior creates a hostile work environment for the other members of the crew and they become reluctant to work with you. ... One of the main issues we discussed was perception, how your coworkers view your actions and demeanor. ....

2.5 The January 16, 1997 letter also required that Appellant attend stress management and interpersonal communication classes in March and April 1997.

2.6 On March 13, 2001, Appellant transferred to the George Maintenance Shed to a position as a Maintenance Technician 2. Appellant's work shift was scheduled from 6 a.m. to 4:30 p.m. Prior to his transfer, Mr. Heinold addressed Appellant's anger issues and directed him to treat others with dignity and respect. Mr. Heinold also provided Appellant with the agency's policy on Managing Violence in the Workplace.

2.7 In November 2001, the department put into practice a contingency schedule, which allows the department to change employee schedules without a seven day notice. The contingency schedule is implemented during the snow and ice season and during forest fire fighting season. As a result of the contingency schedule, Appellant and Maintenance Technician Dean Alexander were scheduled to work nights (6 p.m. to 4:30 a.m.). Appellant discussed his disapproval of the new contingency schedule with supervisor Rich Littleton, who informed Appellant that all maintenance crew employees were required to go on the schedule. However, Appellant continued to voice complaints about the schedule.



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2.8 On November 28, 2001, the contingency schedule took effect. Appellant and Mr. Alexander reported to work at 6 a.m., but later that morning they were told to go home and directed to report back to work at 6 p.m. Appellant was admittedly unhappy with the contingency schedule, which became apparent during a conversation with Mr. Alexander in the maintenance office. Appellant appeared visibly agitated and stated to Mr. Alexander that he did not like the contingency schedule. Appellant also stated that the only two individuals who wanted to implement the contingency schedule were Mr. Heinold and Mr. Littleton, and that the rest of the maintenance staff did not like the schedule.

2.9 The subsequent conversation is in dispute. Appellant denies that he made any threatening statements, and he testified that his comments to Mr. Alexander were related to the work contingency schedule and the requirement that he work nights. Appellant testified that he was stressed and was telling Mr. Alexander that it was his work situation that "was taking its toll on me and killing me." Appellant also testified that he told Mr. Alexander that he could understand situations where highly stressed individuals "could be forced to do things they did not want to do" and "how people could become violent toward other people." After evaluating the testimony from Appellant and from Mr. Alexander, we do not find Appellant's explanations credible. Furthermore, we find no reason for Mr. Alexander to be untruthful regarding the statements he attributes to Appellant. Therefore, we make the following findings based on the preponderance of the credible evidence.

2.10 Appellant continued to express his displeasure and dislike for the contingency schedule. Appellant then said, "I should bring my gun and kill those mother fuckers because they are killing



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me." Appellant appeared irate, angry, red in the face, and his hands were clenched when he made the statement. Mr. Alexander was both surprised and concerned by the comment. Based on the context of the conversation, Mr. Alexander inferred that Appellant's threat was directed at Mr. Heinold and Mr. Littleton because the conversation was centered around them. Mr. Alexander told Appellant that he could not talk like that and Appellant appeared to calm down. Appellant and Mr. Alexander continued to work for the remainder of the shift.

2.11 Mr. Alexander was in the best position to determine whether Appellant's comments could be considered threats. In this case, Mr. Alexander credibly testified that Appellant appeared serious when he threatened to bring a gun to work, and based on his demeanor, he did not believe that Appellant's comment was stated as a joke. Following the November 28 incident, Mr. Alexander remained concerned, and he provided compelling testimony about his feelings of ambivalence when weighing whether to report the comments to management. Mr. Alexander feared that Appellant might follow through with his threat, however, he did not want to jump to the wrong conclusion. Mr. Alexander was also concerned that the issue would not remain confidential if he reported it. Mr. Alexander finally decided that it was a onetime incident and chose not to bring the issue to anyone's attention.

2.12 Appellant and Mr. Alexander did not work together again until the following week, December 5, 2001. On December 5, Mr. Heinold and Mr. Littleton were also scheduled to meet with Appellant to discuss his performance evaluation.

2.13 Appellant arrived to work around 5:30 p.m. and was again talking to Mr. Alexander about his unhappiness with the contingency shift and criticizing Mr. Heinold and Mr. Littleton for


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implementing the schedule. Appellant told Mr. Alexander that "they were out to get him." Mr. Alexander again inferred that Appellant was referring to Mr. Heinold and Mr. Littleton. Appellant appeared agitated, stating that "they were after him" and that he "needed to do something about it." Mr. Alexander felt Appellant was making another threat of harm against Mr. Heinold and Mr. Littleton. Mr. Alexander became alarmed and began to seriously believe that Appellant would follow through with his threats.

2.14 Appellant subsequently left to enter the evaluation meeting with Mr. Heinold and Mr. Littleton in a private office. Shortly after the meeting began, Mr. Littleton stepped out of the office to talk to another employee. Mr. Alexander approached Mr. Littleton and reported that Appellant had made threats to kill Mr. Littleton and Mr. Heinold. After he learned of Appellant's statement, Mr. Heinold reasonably feared that Appellant's statement was a threat of harm against him, and he took the steps necessary to tell his supervisor about the threats.

2.15 On December 6, 2001, Appellant was administratively reassigned to his home pending an investigation into the allegation that he made threats to kill Mr. Heinold and Mr. Littleton.

2.16 The Department of Transportation adopted a policy that addresses violence in the workplace. The policy advises employees that the department will not tolerate employees who engage in behaviors that are intimidating, harassing, hostile or violent. The policy, in part, describes intimidating and/or harassing behaviors as verbal threats toward a person or property. Appellant admits he received the policy but that he failed to read it.



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2.17 Don Senn, Regional Administrator for the North Central Region, was Appellant's appointing authority when the discipline was imposed. Mr. Senn concluded that Appellant made the statements, that they were in fact threats, specifically a threat to use a weapon against coworkers. Mr. Senn concluded that Appellant neglected his duty and failed to follow the agency's policy on Managing Violence in the Workplace. He also felt that the threat rose to the level of gross misconduct. Mr. Senn was aware that Appellant did not receive formal training on the policy, however, he did not believe that this failure mitigated Appellant's responsibility to understand and follow the policy's directive.

2.18 In determining the level of discipline, Mr. Senn reviewed Appellant's personnel file including his performance evaluations, the training he had received and the letter of concern dated January 17, 1997 from Mr. Heinold. Mr. Senn also reviewed and considered a letter from Appellant in response to the January 17 letter.

2.19 In addition, Mr. Senn allowed Appellant to respond to the charges on January 2, 2002, when he met with Appellant and Appellant's union representative. After considering Appellant's response to the charges, Mr. Senn did not feel that he presented any mitigating facts or that he brought forth any information to discredit Mr. Alexander's version of the events. Mr. Senn concluded that immediate suspension followed by dismissal was appropriate based on Appellant's threatening remark about bringing a gun and killing two of his coworkers.

## III. MOTION

3.1 At the close of Respondent's case, Appellant moved for a motion to dismiss the charges arguing that Respondent had failed to meet its burden of proving the charges by a preponderance of



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the evidence. Appellant argued that Respondent failed to prove that Appellant's statements were direct threats against Mr. Heinold and Mr. Littleton; failed to prove that Appellant ever received or read the agency's policy on Managing Violence in the Workplace; and failed to provide Appellant with training on the policy.

3.2 Respondent asked the Board to deny the motion, arguing that both the evidence and Mr. Heinold's testimony supported that Appellant received the policy. Respondent contended that whether Appellant chose to read it is not at issue because he was given an opportunity to read and become familiar with the policy. Respondent further argued that the discussion between Appellant and Mr. Alexander revolved around Mr. Heinold and Mr. Littleton and that Mr. Alexander felt that Appellant's comment on November 28 that "he should get his gun" was directed specifically at them. Respondent argued that on December 6, Mr. Alexander again heard Appellant make comments of a threatening nature. Respondent argued that it was clear that the two statements were in fact threats directed around and toward Mr. Heinold and Mr. Littleton.

3.3 The Board orally denied Appellant's motion and now affirms that decision.

## IV. ARGUMENTS OF THE PARTIES

4.1 Respondent argues that Mr. Alexander presented credible testimony regarding the statement made by Appellant and that the department took the threats of violence very seriously. Respondent argues that Appellant's comments to Mr. Alexander during the two incidents were clear threats. Respondent asserts that the agency's policy on Managing Violence in the Workplace clearly states that verbal threats are considered intimidating and harassing behavior that is unacceptable. Respondent argues that Appellant had a history of exhibiting anger in the workplace, and that he


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was cautioned about controlling his temper and anger. Respondent asks the Board to find that the misconduct has been proven and that disciplinary action was appropriate and should be upheld.

4.2 Appellant admits that he was frustrated with the new contingency schedule but denies that he made threatening remarks. Appellant asserts that other employees were not afraid of working with him. Appellant asserts that the comments he made to Mr. Alexander were not directed at anyone and should not be considered threats. Appellant contends that if Mr. Alexander had been truly concerned about threats of violence against others, he would not have waited a week to report the alleged comments. Appellant asserts that he has been honest and should be found credible. Appellant contends there is no evidence that he read the department's policy on violence or evidence that he received training on the policy. Appellant argues that the state has not met its burden and that the discipline imposed was too severe.

## V. CONCLUSIONS OF LAW

5.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter herein.

5.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting the charges upon which the action was initiated by proving by a preponderance of the credible evidence that Appellant committed the offenses set forth in the disciplinary letter and that the sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983).



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5.3 Neglect of duty is established when it is shown that an employee has a duty to his or her employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987).

5.4 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

5.5 Willful violation of published employing agency or institution or Personnel Resources Board rules or regulations is established by facts showing the existence and publication of the rules or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

5.5 Respondent has proven by a preponderance of the credible evidence that Appellant made threatening remarks against two coworkers. Appellant asserts that he was not familiar with the agency's policy on Managing Violence in the Workplace and that management failed to send him to training. However, such training is not necessary for an employee to understand the inappropriateness of making threats of violence toward others. Appellant was admittedly frustrated and angry when he made the comment on November 28 that he should bring his gun to work. He was also frustrated and angry on December 6 when he continued to discuss the contingency schedule and comment that "they were out to get him and that he needed to take care of it." These comments were highly inappropriate and should be taken seriously. Moreover, when these comments were made by an employee with a history of displaying anger in the workplace, it becomes even more vital for the employer to take necessary steps to ensure that the workplace remains safe. An employer cannot wait for an employee to follow through with threats of violence


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before taking action. Respondent has proven that Appellant's misconduct violated the agency's policy on violence in the workplace and interfered with the agency's ability to provide a workplace free from threats toward others and rises to the level of gross misconduct.

5.6 In determining whether a sanction imposed is appropriate, consideration must be given to the facts and circumstances, including the seriousness and circumstances of the offenses. The penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the program. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

5.7 Under the facts and circumstances of this case, including the seriousness of the offenses, we conclude that Respondent has proven that the sanction of immediate suspension followed by dismissal is appropriate and the appeal should be denied.

## V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Albert Cranson Jr. is denied.

DATED this _____ day of _____, 2003.

WASHINGTON STATE PERSONNEL APPEALS BOARD

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Walter T. Hubbard, Chair

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Gerald L. Morgen, Vice Chair



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